

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2020-218-E - ORDER NO. 2020-753  
DECEMBER 22, 2020

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| IN RE: Alex Kadoshnikov, Complainant/Petitioner v. | ) | ORDER DENYING THE |
| Duke Energy Carolinas, LLC,                        | ) | MOTION TO DISMISS |
| Defendant/Respondent                               | ) | COMPLAINT         |

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Motion to Dismiss the Complaint of Alex Kadoshnikov (“Kadoshnikov” or the “Complainant”) filed by Duke Energy Carolinas, LLC (“DEC” or the “Company”). The Company argues the Complaint fails to allege any violation of a statute or regulation for which the Commission can grant relief and, pursuant to S.C. Code Ann. § 58-27-1990, a hearing in this case is not necessary in the public interest or for the protection of substantial rights. The Company also asserts that Mr. Kadoshnikov’s Complaint is barred by the doctrine of *res judicata*.

**II. FACTS AND PROCEDURAL HISTORY**

On September 3, 2020, Mr. Kadoshnikov filed a Complaint with the Commission, stating he is currently enrolled in the smart meter opt out program with DEC but requests that a bi-directional, non-communicating manually read meter be installed at his residence so that he can buy and sell electricity from the Company. Out of concern for his family’s health and safety, Mr. Kadoshnikov suggests the installation can be achieved safely by

connecting a telephone to send usage information or mounting a meter on his pole and tie in there instead of at his residence.

On October 2, 2020, DEC filed an Answer and Motion to Dismiss Complaint, arguing the Complaint fails to allege any violation of a statute or regulation for which the Commission can grant relief. Thus, the Company asserts, a hearing in this case is not necessary in the public interest or for the protection of substantial rights. DEC also asserts the Complaint is barred by the doctrine of *res judicata* because Mr. Kadoshnikov could have raised these issues or the option of relocating his meter as part of his 2018 complaint proceeding regarding Advanced Metering Infrastructure (“AMI”) meters.

**a. DEC’s Manually Read Meter Rider**

In 2016, DEC informed the Commission that the Company had begun AMI deployment to its South Carolina customers.<sup>1</sup> AMI deployment consisted of the installation of smart meters, which the Company tests to confirm compliance with all applicable regulatory requirements. Nevertheless, some customers had concerns about the safety of smart meters. These customers were temporarily bypassed during deployment and continued to be served by automatic meter reading (“AMR”) meters. AMR meters collect and transmit customers’ kilowatt-hour usage via a low-power radio frequency signal that is read by computer from the Company’s trucks as the meter readers drive by the customer’s location.

As smart meters deployed, the Company discontinued routes for reading AMR meters. For that reason, and to accommodate the limited number of customers’ concerns

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<sup>1</sup> See Docket No. 2016-354-E, *Duke Energy Carolinas, LLC’s Request for Approval of AMI Opt-Out Rider*.

related to smart meter deployment, DEC proposed – and the Commission approved – the Manually Read Meter (“MRM”) Rider.<sup>2</sup> Under the MRM Rider, rather than electricity usage being communicated to the Company via radio frequency, the meter is read manually by a meter reader physically visiting the customer’s premises.

The MRM Rider, however, “is not available to customers taking service under a net metering rider”<sup>3</sup> as legacy AMR meters do not support net metering. In a similar complaint proceeding, the Company explained that “DEC uses 30-minute interval data to bill its net metering customers, and analog meters are incapable of capturing this level of detailed data. This is why the MRM Rider expressly precludes participation by customers taking service under a net metering rider.” Duke Energy Carolinas, LLC’s Motion to Dismiss, Docket No. 2019-187-E (June 18, 2019). In granting the Company’s Motion to Dismiss, the Commission noted, “the MRM Rider, by its own terms, is not available to customers taking service under a net metering rider, so opting for a manually-read meter would preclude [complainant] from using the solar panels he has purchased.”<sup>4</sup>

An AMI meter must be installed at Complainant’s residence before he would be allowed to enroll in the Company’s Renewable Net Metering (“RNM”) Rider. Rider RNM provides that the Company will furnish, install, own and maintain a billing meter at a location that is readily accessible by the Company.<sup>5</sup> According to DEC, Mr. Kadoshnikov

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<sup>2</sup> The Commission approved DEC’s Manually Read Meter (“MRM”) Rider by Order No. 2016-791, issued on November 17, 2016, and Order No. 2019-429, issued on June 12, 2019.

<sup>3</sup> See Duke Energy Carolinas, LLC’s Rider MRM (SC) Manually Read Meter Rider, p. 1 (July 23, 2019).

<sup>4</sup> Order No. 2019-506, Docket No. 2019-187-E (July 11, 2019).

<sup>5</sup> See Duke Energy Carolinas, LLC’s Rider RNM (SC) Renewable Net Metering, p. 2 (October 5, 2020).

can either: (1) have an AMI meter installed and enroll in the RNM Rider, or (2) remain enrolled in the MRM Rider, under which net metering is not available.

**b. 2018 Kadoshnikov Complaint (Docket No. 2018-124-E)**

On April 5, 2018, Mr. Kadoshnikov filed a complaint with the Commission, alleging health risks associated with smart meters and opposing the fees associated with the Company's MRM program.<sup>6</sup> Mr. Kadoshnikov filed an amended complaint on May 3, 2018. It contained allegations similar to the allegations contained in the April 5, 2018 complaint and described concerns with meter data security. On September 19, 2018, the Commission granted DEC's Motion to Dismiss the amended complaint as "the issues [Mr. Kadoshnikov] raised related to the use of AMI meters do not constitute a claim for a violation of Commission Rules and Regulations. . . ." Mr. Kadoshnikov then filed a Petition for Reconsideration of Order No. 2018-625. The Commission denied the Petition for Reconsideration.

**III. LAW**

"Any person complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission, may file a written complaint with the Commission, . . ." S.C. Code Ann. Regs. 103-824 (2012). The commission may "dismiss any petition without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights." S.C. Code Ann. § 58-27-1990 (2015).

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<sup>6</sup> See Docket No. 2018-124-E, *Alex, Complainant/Petitioner v. Duke Energy Carolinas, LLC, Defendant/Respondent*.

In deciding a motion to dismiss, the Commission should consider only the allegations set forth in the face of the Complaint. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The motion should not be granted if the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on the theory of his Complaint. *Id.* The Complaint should not be dismissed merely because the court doubts the party will prevail in the action. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

The legal doctrine of *res judicata* bars subsequent litigation between identical parties where the claims arise out of the same transaction or occurrence that was the subject of the prior litigation between those same parties. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992). This doctrine also bars litigants from raising any issues which might have been raised in the prior action. *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 362 S.E.2d 176 (1987). The Commission recently applied the doctrine of *res judicata* in Order No. 2020-519, Docket No. 2019-331-E, *Enrique McMilion, Jr., Complainant/Petitioner v. Duke Energy Carolinas, LLC, Defendant/Respondent* (August 7, 2020).

#### IV. DISCUSSION

The question is whether, in the light most favorable to Mr. Kadoshnikov, and with every doubt resolved in his behalf, the Complaint states any valid claim for relief. *Toussaint*, 292 S.C. at 416, 357 S.E.2d at 9 (citing 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357 (1969)). The meter relocation option suggested by Mr. Kadoshnikov creates a question of fact as to whether or not the meter can be relocated as

provided under the Company's tariff. Whether the alternative location suggested by Mr. Kadoshnikov presents any concerns regarding accessibility or if the Company has any additional issues concerning relocation further create a question of fact to be determined by the Commission. Accordingly, the Motion to Dismiss should be denied.

Having denied DEC's Motion to Dismiss, the Commission need not address the Company's argument under the doctrine of *res judicata*.

## **V. FINDINGS OF FACT**

1. The Commission finds that the meter relocation option suggested by Mr. Kadoshnikov creates a question of fact as to whether or not the meter can be relocated as provided under the Company's tariff.

## **VI. CONCLUSIONS OF LAW**

1. The Commission concludes that the meter relocation option suggested by Mr. Kadoshnikov creates a question of fact as to whether or not the meter can be relocated as provided under the Company's tariff which must be addressed by the Commission.

2. The Commission concludes that the Clerk's Office shall establish a new schedule for filing testimony and shall reschedule the hearing before the Commission.


## **VII. ORDERING PROVISIONS**

1. The Motion to Dismiss filed by Duke Energy Carolinas, LLC is hereby denied.

2. The Clerk's Office of the Commission is to establish a new schedule for filing testimony and reschedule the hearing before the Commission.

3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



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Justin T. Williams, Chairman  
Public Service Commission of  
South Carolina